IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04..9..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.10570 and 11316 of 2007
and
M.P.No. 1 of 2007 in W.P.No.10570 of 2007
and
M.P.Nos. 1 and 2 of 2007 in W.P.No.11316 of 2007

A.Petchimuthu .. Petitioner in both W.Ps.

vs.

1. The Chief Executive Officer
Tamil Nadu Khadi and Village Industries Board
Kuralagam
Chennai 600 108.

2. The Assistant Director
Khadi and Village Industries
Guindy
Chennai 600 032. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorari calling for the records pertaining to the charge memo and suspension issued by the respondents 2 and 1 respectively in their proceedings in Na.Ka.No.4024/94/C dated 13.02.2007 and Rc.No.6009/F(3)(3)/07 respectively dated 28.02.2007 and to quash the same.

For Petitioners : Mr.N.Manoharan
in both WPs

For Respondents : Mr.Packiaraj
in both Wps

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C O M M O N O R D E R

In W.P.No.11316 of 2007, the petitioner challenges the order of suspension dated 28.02.2007 on the ground that the charge memo itself is under challenge in W.P.No.10570 of 2007 and the matter is stayed by this court.

2. The petitioner was working as a Khadi Assistant Grade I in the Tamil Nadu Khadi and Village Industries Board. During

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the year 1991, he was deputed to work as Village industries Co-operative Supervisor for the period from 03.5.1991 to 06.10.1991. At that time, there was a proposal to form a Society by name Adyar Electronics and Electrical Wiring, Service, Painting and Stationary Producers' Co-operative Society. Subsequently, the petitioner was transferred to Vellore on 06.10.1991. It was found that during the period in which the petitioner was working, there were some irregularities and misappropriation in the Society and the matter was investigated by Directorate of Vigilance and Anti-Corruption Wing, Chennai and when the said case is pending before the Court, the petitioner reached the age of superannuation on 31.3.2007. Before the petitioner could retire, he was placed under suspension with a view to prevent him from getting superannuated. The order, which was passed by the Chief Executive Officer of the respondent Board, is under challenge in W.P.No.11316 of 2007.

3. In W.P.No. 10570 of 2007, it is the charge memo dated 13.02.2007, which is under challenge by the petitioner. The charges were serious and relate to misappropriation of several lakhs of rupees in the Society. The said charge memo was challenged solely on the ground that there was inordinate delay. This Court, while admitting the writ petition on 22.3.2007, granted an interim injunction by relying upon the judgment of the Supreme Court reported in 2006 (5) SCC 88 [M.V.Bijlani v. Union of India and others]. It is in the strength of the said interim order, the petitioner seeks to quash the order of suspension.

4. I have heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.Packiaraj, learned counsel appearing for the respondents and have perused the records.

5. The main argument of the petitioner is based upon the judgment of the Supreme court reported in 2005 (4) CTC 403 [P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board]. In the said judgment, it was held that conducting of enquiry with a considerable amount of delay will be prejudicial to Government servant and keeping the Government servant under protracted proceedings will create mental agony. But the facts of that case will clearly show that a charge memo was issued on 08.6.2000 relating to an alleged irregularity in the sale deed dated 19.9.1990 and that was nearly ten years before that incident. This was not satisfactorily explained by the Housing Board and it is in the factual background, the Supreme Court chose to interfere with the charge memo.

6. The learned counsel also relied upon the Division Bench judgment of this Court reported in 2006 (1) CTC 476 [Parameswaran v. State of Tamil Nadu and others] and 2006 (2) CTC 635

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[M.Elangovan v. The Trichy District Central CO-op. Bank Ltd., Thiruchirapalli and another]. Further, reliance was also placed on the latter judgment of the Supreme Court reported in 2006 (5) SCC 88 (cited supra), which was referred to by this Court at the time of granting interim order. That itself has been distinguished by subsequent judgment of the Supreme Court. But in the present case, it may be seen that the irregularities took place at the time when the petitioner was deputed to form a Co-operative Society and the said irregularities came to light much later and also, there was a vigilance probe into the said matter. In fact, the Supreme Court had an occasion to consider *Bijlani's case* (cited supra) subsequently.

7. In the decision reported in 1995 (3) SCC 134 [*Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey and others*], the Supreme Court held that the delay in framing charge cannot be a ground to interfere with the charge memo and the relevant passage found paragraph 7 of the said judgment is extracted below:

> Para 7: "On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay...."

8. Further, in 1996 (3) SCC 157 [*Secretary to Government, Prohibition and Excise Department v. L.Srinivasan*], the Supreme Court has held that the charge cannot be quashed only on the ground of delay and any finding recorded by the Court will prejudice the enquiry. The Supreme Court has also pulled up the member of the Administrative Tribunal for having interfered with the charge memo as if the Tribunal is the appellate authority. The following passage found in paragraph 3 of the said judgment makes the position very clear.

> Para 3: "We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court

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would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied."

9. Very recently, the Supreme Court in 2007 AIR SCW 1639 [*Government of A.P. and others v. V.Appala Swamy*] has held the parameters of interfering with a charge sheet on the ground of delay in paragraphs 10, 12 and 13, which read as follows:

Para 10: "So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:
(1) Where by reason of the delay, the employer condoned the lapses on the part of the employee.

(2) Where the delay caused prejudice to the employee.
Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer."

Para 12: "Learned counsel appearing on behalf of the respondent, however, placed strong reliance on a decision of this Court in *M.V. Billani vs. Union of India & Others* (2006(5) SCC 88). That case was decided on its peculiar facts. In that case, even the basic material on which a departmental proceedings could be initiated was absent. The departmental proceedings was initiated after 6 years and continued for a period of 7 years. In that fact situation, it was held that the appellant therein was prejudiced.

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Para 13: *Billani (supra)*, therefore, is not an authority and, in fact, as would appear from the decision in *P.D. Agrawal (supra)*, for the proposition that only on the ground of delay the entire proceedings can be quashed without considering the other relevant factors therefor."

10. In the light of the above decisions of the Apex Court, the writ petition is clearly misconceived and there are no grounds warranting interference of the charge memo at this stage. Hence, W.P.No.10570 of 2007 shall stand dismissed.

11. Since the only ground on which the challenge to suspension was made in W.P. No.11316 of 2007 was that the charge memo was under stay by this court. Since the writ petition relating to the charge memo itself has been dismissed, there is no case for warranting any interference in the order of suspension, which is impugned in the W.P.No.11316 of 2007. Accordingly, W.P.No.11316 of 2007 is also dismissed.

12. In view of the above, both the writ petitions shall stand dismissed. However, there will be no order as to costs. Connected Miscellaneous Petitions in both the writ petitions will stand closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
1. The Chief Executive Officer
Tamil Nadu Khadi and Village Industries Board
Kuralagam,Chennai 600 108.

2. The Assistant Director
Khadi and Village Industries
Guindy,Chennai 600 032

+2ccs to Mr.N.Manoharan, Advocate Sr 55201 & 55202

GG (CO)
km/12.9.

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